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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,942	09/28/2006	Paul Omdoll	1414.093	5667
23598 7590 06/11/2009 BOYLE FREDRICKSON S.C. 840 North Plankinton Avenue MILWAUKEE, WI 53203				
EXAMINER RAHIM, AZIM				
ART UNIT 3744		PAPER NUMBER		
NOTIFICATION DATE 06/11/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

### Office Action Summary

**Application No.**

10/594,942

**Applicant(s)**

OMDOLL ET AL.

**Examiner**

AZIM RAHIM

**Art Unit**

3744

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 6-10, 13-15 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) 7, 15 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 8-10, 13, 14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/30/2009
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Remarks***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and the final rejection has been vacated. Therefore, the finality of that action is withdrawn.

### ***Election/Restrictions***

1. Newly submitted claims 7, 15 and 21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 7 and 15 are directed to the non-elected species as indicated by the Applicant in the response dated 9/16/2008, and claim 21 includes structure not disclosed in the specification or the drawings directed to the elected species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7, 15 and 21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Objections***

2. Claims 1-3, 6 and 19 are objected to because of the following informalities: In claim 1, line 9, the phrase "when the cover is engaged with the cover" should be corrected to recite --

when the cover is engaged with the mouth--. In claim 19, line 1, the word "lection" should be spelled --section--. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-3, 6, 8-10, 13, 14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinarsky (US 5,597,087) in view of Yurkewicz et al. (Yurkewicz, 5,975,369).

Regarding claims 1, 8 and 18, Vinarsky teaches a device [figure 1] for chilling a warm material in a vessel, comprising: a body (12) having a base (16), a series of sidewalls (14 and 32) extending upwardly from the base [illustrated in figure 1], a top (18) connected to the sidewalls and above the base [illustrated in figure 1], wherein the base, sidewalls, and top collectively

define at least a partially hollow interior [illustrated in figure 1]; a mouth [area disposed inside neck 22] situated on said body providing access to the hollow interior of said body [column 3, lines 39-41], wherein said mouth is formed in the top of said body [illustrated in figure 1] and has an opening defined along a plane that is parallel to the base [annotated in the drawing shown below]; wherein the mouth defines a maximum fill level (36) at which a cooling substance may be loaded into the body [illustrated in figure 1]; a cover (26) having a hollow interior [illustrated in figure 1] that is fluidly coupled to the hollow interior of the body when the cover is engaged with the mouth [illustrated in figure 1], such that when the hollow interior of said body is filled with liquid, the hollow interior of the cover remains unfilled with the liquid [the structure as taught by Vinarsky is capable of performing this intended use function] and to provide for expansion of liquid from within the body through the mouth and into the hollow area of the cover when said body is filled with a cooling substance and then frozen or otherwise exposed to an environment that causes the cooling substance with which said body is filled to expand liquid [the structure as taught by Vinarsky is capable of performing this intended use function]; wherein the cover and the body collectively provide a closed volume that permits limited expansion of liquid contained in the body into the cover [the structure as taught by Vinarsky is capable of performing this intended use function]. Vinarsky further teaches that the body has a lower section [annotated below] and an upper section [annotated below] and wherein the lower section includes a bottom surface (16) for supporting the device in a standing position when the device is placed in the vessel [this is an intended use limitation that recites function rather than structure and the body is capable of being placed inside of a vessel]; wherein the mouth is formed in the lower section of the body [illustrated below]; and a handle [annotated below] formed in the

upper section of the body [illustrated below], wherein the handle has a generally upright orientation defined orthogonal to the bottom surface of the lower section [annotated below].

Vinarsky fail to teach that the cover is adapted to close the mouth and wherein liquid may only be removed from the hollow interior of the body when the cover is disengaged from the mouth liquid.

Yurkewicz teaches the concept of providing a resealable pushable container closure and cover (see figure 1) that can be disposed on a sports bottle that is adapted to allow fluid to be withdrawn via tip (14) while cover (16) is disengaged (see abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Vinarsky to include the container cover as taught by Yurkewicz in order to prevent a user from spilling liquid out of the bottle.

Regarding claims 2 and 9, Vinarsky teaches that the device cannot be overfilled [via fill line 36].

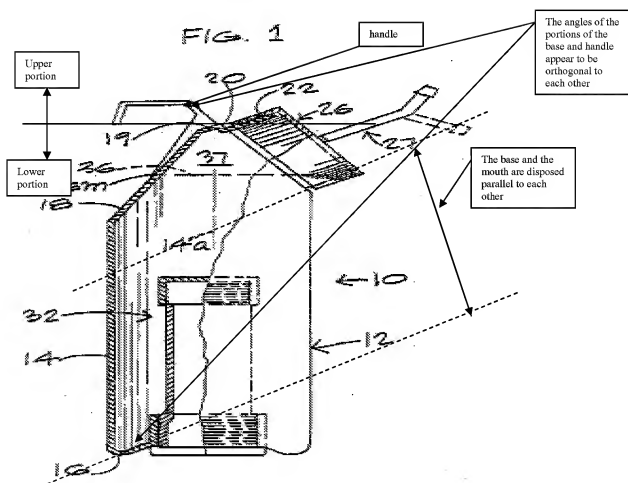
Regarding claims 3 and 10, Vinarsky teaches that the mouth is sized to accommodate ice cubes [as illustrated in figure 1, the mouth is capable of accommodating ice cubes smaller than the mouth].

Regarding claims 6 and 13, Vinarsky teaches a means for hanging said device (annotated below).

Regarding claim 14, Vinarsky teaches that the means for hanging said device is part of said cover [illustrated in below, the handle is integrally connected to the cover when the cover is connected to the body].

Regarding claim 19, Vinarsky teaches that during use, the lower section of the body is submerged in the warm material and the upper section, including the handle, are in a raised position relative to the warm material so that the handle may be grasped by a hand without the hand contacting the warm material [the claimed device as taught by Vinarsky is capable of performing this functional limitation].

Regarding claim 20, Vinarsky teaches that the mouth is defined along a plane that is parallel to that of the bottom surface of the lower section [annotated below].



*Response to Arguments*

6. Applicant's arguments with respect to claims 1-3, 6, 8-10, 13, 14 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. ~~In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.~~

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AZIM RAHIM whose telephone number is (571) 270-1998. The examiner can normally be reached on Monday - Thursday 7am - 3pm EST and Friday 7am - 9:30am EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. R./  
Examiner, Art Unit 3744  
6/8/2009

/Frantz F. Jules/  
Supervisory Patent Examiner, Art Unit 3744